

‘Make in India’ series

Emerging Trends - International

Arbitration:

(i) E- discovery

(ii) Hot tubbing



Juris Corp
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**e-Discovery
It's Time!**

Discovery

- Order XI Rule 12 of CPC - *Application for discovery of documents*
- At any stage - including ad-interim stage
- Documents **which are or have been** in the possession or power - relating to the matter in question
- Object of Discovery:
 - Fairly dispose the matter
 - Save costs/ avoid lengthy trail
 - Throw light on the controversy in the matter
 - Destroy the other party's case

e-Discovery

- Identification, collection and production of 'ESI'
- In response to or anticipation of a request for production in a law suit or investigation
- ESI: emails, documents, presentations, databases, voicemail, audio and video files, social media, web sites, etc.
- On par with physical discovery (Better or Worse depends on ...)

'Electronic record' as evidence

- Courts in India recognize electronic evidence
- Section 3 of IT Act defines 'Evidence' and Section 4 IT Act gives legal recognition to electronic evidence
- Evidence Act amended
- Acceptability of evidence on the basis of 'authenticity' and relevance

What is different about e-discovery?

- Not circumscribed
- There will be too many Smoking Guns
- Technology including AI

Litigation Hold - obligation to preserve

- Preservation of all forms of **relevant information**
- Maximize defensibility:
 - sound, repeatable methodology
 - consistency in the process
- Claim of privilege
- Spoliation - adverse inference
 - ‘Smoking gun’ principle

Challenges

- Unfamiliarity
- Confuse with 'fishing and roving' enquiry
- Confuse with 'search and seizure'



Hot Tubbing: Is it time to take the plunge?

Source: http://www.lawgazette.co.uk/pictures/603xAny/4/2/1/4421_Expert-witness-cartoon.jpg

What is Hot Tubbing?!



Hot Tubbing

- Hot Tubbing = Concurrent Evidence / Dueling Experts
- Focus on search for truth v/s siding party that hired you
- Pros and Cons
- Will Hot tubbing work for me?

**For Queries,
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